

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID OWENS HOOPER,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:11-cv-00221-LRH-VPC

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. Petitioner has filed a motion to proceed *in forma pauperis* (docket #1). Based on the information concerning petitioner's financial status, the court finds that the motion to proceed *in forma pauperis* should be granted. Petitioner shall not be required to pay the filing fee for his habeas corpus petition. The petition (docket # 1-1) and the motion for stay and for counsel (docket #1-2) will be ordered filed and docketed.

Petitioner moves the court for leave to file supplemental causes in his petition (docket #5). The court grants petitioner leave to file an amended petition that includes all claims for relief that petitioner wishes to assert. A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). Additionally, the court notes that in the petition currently before the court, petitioner refers to his petition for post-conviction relief filed in state court and seeks to incorporate the state court petition's content by reference. A petition filed in this court must be a complete document in itself that does not

1 incorporate by reference content from another petition in another case. Petitioner shall file a complete
2 first amended petition in this case within thirty (30) days from the date of service of this order. The
3 court expressly cautions petitioner that his failure to comply with this order will result in the dismissal
4 of this case.

5 Petitioner also moves for the appointment of counsel, a stay, and an evidentiary hearing (docket
6 #1-2, 6.) There is no constitutional right to appointed counsel for a federal habeas corpus proceeding.
7 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993).
8 The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
9 Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert.*
10 *denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are
11 such that denial of counsel would amount to a denial of due process, and where the petitioner is a person
12 of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at
13 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The claims in this case are not
14 especially complex. Therefore, petitioner's motion for counsel shall be denied.

15 With respect to petitioner's motions for a stay and evidentiary hearing, petitioner's papers fail
16 to demonstrate grounds relevant to this case necessitating either a stay or an evidentiary hearing at this
17 time. Accordingly, the court denies petitioner's motions for stay and evidentiary hearing.

18 Last, petitioner requests copies of certain documents filed with the court (docket #7) and legal
19 supplies and/or copywork (docket #8). In order to facilitate the filing of petitioner's first amended
20 complaint, the court grants petitioner's request for a copy of his motion to supplement (docket #5).
21 However, the court denies petitioner's request for a copy of a document dated "16 November 2010"
22 because such a document does not exist in this case. The court grants petitioner's request for copywork
23 for the limited purpose of filing a first amended complaint as required by this order.

24 **IT IS THEREFORE ORDERED** that petitioner's motion to proceed *in forma pauperis* (docket
25 #1) is **GRANTED**.

26 **IT IS FURTHER ORDERED** that the Clerk shall **FILE** the petition (docket #1-1) and the
27 motion for stay and counsel (docket #1-2).

28 **IT IS FURTHER ORDERED** that petitioner's motion for stay and counsel (docket #1-2) is

1 **DENIED.**

2 **IT IS FURTHER ORDERED** that petitioner's motion for leave to file supplemental causes
3 (docket #5) is **GRANTED**. The Clerk shall send petitioner the appropriate form for filing a Section
4 2254 petition in this court, along with the appropriate instructions. Petitioner shall file a first amended
5 petition within **thirty (30) days** from the date of service of this order. The petition shall be clearly
6 labeled "First Amended Petition" and shall bear the docket number of this case.

7 **IT IS FURTHER ORDERED** that petitioner's motion evidentiary hearing (docket #6) is
8 **DENIED**.

9 **IT IS FURTHER ORDERED** that petitioner's motion for pleadings copies (docket #7) is
10 **GRANTED** in part and **DENIED** in part. The Clerk shall send petitioner a copy of his motion for leave
11 to file supplementary causes (docket #5).

12 **IT IS FURTHER ORDERED** that petitioner's motion for extra legal supplies and/or copywork
13 (docket #8) is **GRANTED** to the extent that petitioner shall have the copywork necessary to file a first
14 amended petition in compliance with this order, not to exceed \$25.00.

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16 DATED this 12th day of May, 2011.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE